pay less. Ng Chong Ern did find fault with me for having taken Quek Ah Seng without his knowledge.... Quek Ah Seng paid me the $15 much later. As a result of the accident he was admitted to hospital. He paid me after his discharge. I cannot say how long he was in hospital."

Does receipt of the $15 from Lim Siew Liew under the circumstances amount to ratification by the insured of Lim's giving the taxi to Quek for the day?

"Receipt of money, the proceeds of an illegal distress, is not a sufficient ratification of the illegal acts of the agent levying the distress, *unless the principal has knowledge of the illegality:*"

see *Halsbury* Vol. 1, page 175, citing *Freeman* v. *Rosher.*(2) It may be said that *prima facie* this case supports the appellants' plea of ratification, since Ng Chong Ern had full knowledge of the accident by the time he received the $15 payment for the unauthorised use of his taxi. Upon a close reading of the case, however, I think the facts are readily distinguishable. In the instant case Lim Siew Liew was in any event under a contractual obligation personally to pay $20 a day, or whatever lesser sum Ng Chong Ern agreed to accept. This insured had every right to be paid the debt owed by Lim Siew Liew. That Quek was the driver on that particular date was wholly irrelevant to the payment for the daily hiring due by Lim Siew Liew to Ng Chong Ern. Acceptance of such payment was therefore not a ratification of the unauthorised re-hiring of the taxi to Quek.

Moreover —

"To constitute a binding adoption of acts *a priori* unauthorised these conditions must exist: (1) the acts must have been done *for and in the name of the supposed principal,* and (2) there must be full knowledge of what those acts were, or such an unqualified adoption that the inference may properly be drawn that the principal intended to take upon himself the responsibility for such acts, whatever they were": ;

per Lord Russell of Killowen C.J. in *Marsh* v. *Joseph;*(3) see also *Imperial Bank of Canada* v. *Begley.*(4)

It has further been contended by counsel for the appellants that Lim Siew Liew being one of the persons entitled under the policy to be indemnified, he was a person insured, so that his permission given to Quek to drive the taxi should have the effect of bringing Quek within the definition of "authorised driver". We were referred to *Manap bin Mat* v. *General Accident, Fire and Life Assurance Corpn. Ltd.*(5) for the extended meaning of "the insured" as decided by the Court of Appeal in Singapore, following *Digby's* case.(6) In my opinion, it is sufficient to say that the extended meaning of "insured" in *Manap's* case is clearly inapplicable here. There, the driver was a person authorised by the owner of the car to drive it. By clause 2 of section II of the policy the contract indemnifying the owner must necessarily be extended to cover his driver also, for the obvious reason that the owner is vicariously liable for the driver's negligence. In that sense the authorised driver has to be treated "as though he were the insured"; otherwise no one but the policy holder himself can have any claim to indemnity. This, however, does not mean that any authorised driver, as the agent of the policy-holder, may be treated for all purposes as if he were the insured himself. An agent can only bind his principal when acting within the scope of his authority. Lim Siew Liew was clearly not acting as the policy-holder's agent, but on his own account, when he gave the taxi to Quek. The definition of "authorised driver" was unambiguous and the *contra proferentem* rule, therefore, could have no application. Had judgment been obtained against Lim Siew Liew, the provisions of section 80(1) would have obliged the respondents to satisfy the judgment, leaving it to them to recover from him whatever they can under the terms of the policy. He would thus have been indemnified "as though he were the insured" and, for that very reason, he would have been bound to reimburse them for their loss.

It is most unfortunate for the appellants and dependants of the deceased that they must fail in their claim against the respondents, but such is the law. So it would seem that the only recourse left to them is against possibly a man of straw, Lim Siew Liew, on the principle enunciated in *Monk* v. *Warby.*(7) I would dismiss this appeal with costs.

Gill F.J. and **Abdul Hamid J.** concurred.

Appeal dismissed.

Solicitors: *Williams & Tennakoon; Leong Wai Yin & Co.*

PUBLIC PROSECUTOR v. FONG HONG & ANOR.

[A.Cr.J. (Suffian F.J.) July 1, 1972]

[Kuala Lumpur — Raub Criminal Appeal No. 3 of 1972]

Road Traffic — Carrier's licence — Non-compliance of conditions attached thereto — Whether compliance with maximum permissible load to be determined by weigh-bridge or by volume of logs carried — Road Traffic Ordinance, 1958, ss. 53, 143(7A).

This was an appeal against the decision of the learned magistrate.

The question to be determined was whether, for the purpose of calculating the weight of the load carried by the lorry in question when the load consisted only of logs, a weigh-bridge may be used, as contended by the public prosecutor, or was it to be determined by the volume of the logs, as the owner and driver of the lorry contended. The maximum permitted laden weight of the lorry was not to exceed 215 cwts. However, it was found to be overweighed by 3 tons 10 cwts. and 2 qrs.

The learned magistrate held that the load fell to be determined by the volume, as set out in the special condition of the carrier's licence:

> "Notwithstanding any condition contained in this licence. for the purpose of calculating the weight of the load carried by the vehicle authorized herein when the load consists of logs only, 40 cubic feet of logs shall be deemed to be equal to one ton in weight."

The learned magistrate acquitted and discharged both respondents without calling on their defence.

The public prosecutor appealed.

Held, dismissing the appeal: (1) section 53 of the Road Traffic Ordinance merely states who have power to stop lorries and to require them to be weighed and what they have to do after weighing. It does not prescribe the method of weighing lorries;

(2) the court must assume that the special condition in this haulage permit had been imposed by the licensing board. The words "shall be deemed" in the special condition must

mean what they say. Thus, the weight of the load as determined by the volume of logs carried, did not exceed the maximum permitted laden weight of 215 cwts. Therefore, the respondents had not contravened a condition of the licence.

MAGISTRATE'S CRIMINAL APPEAL.

Anuar bin Zainal Abidin (Legal Adviser, Pahang) for the appellant.

Lee Beng Cheang for the respondents.

Cur. Adv. Vult.

Suffian F.J.: The question in this appeal is this — for the purpose of calculating the weight of the load carried by the lorry in question when the load consists only of logs, may a weigh-bridge be used as the Public Prosecutor contends, or must we go by the volume of the logs, as the owner and driver of the lorry contend?

Lorry CB 2837 is authorised to carry timber. Its owner (the first respondent) has a carrier's licence (of which Exhibit P1 is a copy) issued by the licensing board under the Road Traffic Ordinance valid from October 13, 1971 until May 31, 1975. The licence has several conditions, of which two are relevant. One condition stipulates that the maximum permitted laden weight of the lorry shall not exceed 215 cwts. The other is a special condition; it is in Malay which. counsel before me agree, may be translated as follows:

"Notwithstanding any condition contained in this licence, for the purpose of calculating the weight of the load carried by the vehicle authorised herein when the load consists of logs only, 40 cubic feet of logs shall be deemed to be equal to one ton in weight."

On 3rd August, 1971, the police stopped the lorry. It was carrying three logs. An authorised officer within the meaning of section 53 of the Ordinance took it to Raub. He did not measure the logs. Instead he put the laden lorry on the RIMV weigh-bridge. He found it to be overweight by 3 tons 10 cwts and 2 qrs.

The owner was charged with permitting the driver to use the lorry on a public road in contravention of the condition on the licence specifying the permitted maximum laden weight, an offence punishable under section 120(2) of the Ordinance, while the driver (the second respondent) was charged with driving the lorry on a public road in contravention of the same condition.

As it happened, though it was not disputed that according to the weight registered by the weigh-bridge the lorry was overweight, the learned magistrate acquitted and discharged both respondents without calling on their defence. His reason was this: the lorry was carrying timber and its load cannot be determined by putting it on the weigh-bridge, but falls to be determined in the manner set out in the special condition, namely, by volume, and it was admitted by the prosecution in cross-examination that the lorry was carrying 276 cubic feet of timber, the figure given on the Forest Removal Pass issued to the driver by the Forestry Department. 276 cubic feet was less than the maximum permitted laden weight, if 40 cubic feet is counted as one ton.

The public prosecutor appeals.

Inche' Anuar first argues that the method of weighing timber lorries prescribed by the special condition is contrary to law. He says that section 53 has prescribed the method of weighing lorries, that according to it they may be weighed only on a weigh-bridge and not by volume of the timber carried. He says that the addition by Act A118 to section 143 of the new subsection (7A) (empowering the Minister to make rules prescribing the manner in which the laden weight of timber lorries may be determined) is significant as showing that prior to the new subsection such weight might be determined only by putting timber lorries on a weighing machine. I do not accept this argument. In my view section 53 does not bear the construction sought to be placed on it by Inche' Anuar. All that section does is to say who have power to stop lorries and to require them to be weighed, and what they have to do after weighing. In my view, even before the enactment of the new subsection (7A) to section 143 the condition in question can have legal effect.

Inche' Anuar next says that if it is lawful to provide that the weight of logs on a lorry should be determined by their volume, then only the licensing board may do so, and not the RIMV, and that it would appear from a letter reference RTD 126/45 Pt. III B dated 19th March, 1954 that the special condition here was imposed by the RIMV. Now this is a letter brought to the notice of the learned magistrate by defence counsel. It was addressed by the then Commissioner of Road Transport to, among others, the Pan-Malayan Road Transport Operators' Association. It said that it had been agreed between the Forest Department and the Road Transport Department that for the purpose of computing the log load carried by lorries 40 cubic feet of log equalled one ton weight, that the Director of Forestry had agreed to instruct Forest Guards not to issue removal passes for any log loads whose volume exceeded the maximum carrying capacity of the vehicle. The letter ended by inviting members of the Road Transport Operators' Association to turn in their haulage permits to the RIMV in order that the special condition might be attached. Inche' Anuar says that probably the special condition here was endorsed on the licence of this lorry by the RIMV, and not by the licensing board.

My judgment is that the court must assume that the special condition in this haulage permit has been imposed by the licensing board. The copy of the licence exhibited shows that it was issued by the licensing board and the court cannot therefore assume that the conditions on it, including the special condition, have been imposed by the RIMV.

Finally Inche' Anuar argues that even if the special condition has been validly issued, it is still open to the prosecution to weigh this lorry by putting it on a weigh-bridge. I regret I cannot accept this argument. The words "shall be deemed" in the special condition must mean what they say.

The volume of the logs here was 276 cubic feet. The special condition says that 40 cubic feet shall be *deemed* to be one ton in weight. Therefore 276 cubic feet shall be deemed to be just over six tons. Just over six tons does not exceed 215 cwts. Therefore the respondents have not contravened the condition

stipulating that the maximum permitted laden weight of the lorry shall not exceed 215 cwts.

I would therefore dismiss this appeal.

Appeal dismissed.

Solicitors: *Lee Beng Cheang & Co.*

AHMAD BIN YAHAYA & ANOR. v. AHMAD BIN SULAIMAN

[A.C.J. (Syed Agil Barakbah J.) July 1, 1972]
[Alor Star — Civil Appeal No. 5 of 1972]

Practice and Procedure — Appeal — Granting leave to — Whether ignorance of procedure sufficient ground for — Mistake of law — Subordinate Courts Rules, 1950, O. 39 rr. 2 & 3 — Courts of Judicature Act, 1964, First Sch., items 8.

A mistake of law on the ground of ignorance of procedure is not sufficient ground for granting leave to serve notice of appeal out of time.

In this case the second appellant applied for an order that he be granted leave to serve a copy of the notice of appeal on the respondent notwithstanding that the time reserved to serve such copy had expired. The main ground for the application was ignorance of the procedural law. Apart from that, he believed that he had good grounds of appeal and that his appeal would probably be allowed.

Held: (1) ignorance of the procedural law does not constitute sufficient material upon which the judge could exercise his discretion:

(2) it was not enough merely to show that the proposed appeal had merits. It was also necessary to show that there were special grounds for the court to exercise its discretion.

Cases referred to:-

(1) *John Puddicombe Wilkins & 2 Ors.* v. *John Patrick Kenelm Wilkins & Anor.* [1951] M.L.J. 80.

(2) *D.C. Butler-Madden* v. *Krishnasamy* [1947] M.L.J. 182.

(3) *Re Coles and Ravenshear* [1907] 1 K.B. 1.

(4) *Chong Kueng Ying & Ors.* v. *Lovis Lavagna* [1972] 1 M.L.J. 180.

(5) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 229, P.C.

(6) *Ramanath & Ors.* v. *Ban Tsan Chuan* [1967] 2 M.L.J. 284.

(7) *Ee Kim Kin* v. *Collector of Land Revenue, Alor Gajah* [1967] 2 M.L.J. 89.

MOTION.

Karpal Singh for the appellants.

E. Mayandi for the respondent.

Syed Agil Barakbah J.: This is an application by notice of motion by the second appellant for an order that he be granted leave to serve a copy of the notice of appeal on the respondent notwithstanding that the time reserved to serve such copy has expired.

Mr. Karpal Singh appeared for the appellants and Mr. Mayandi for the respondent.

The second appellant in his accompanying affidavit stated that on 14th February, 1972, judgment was given in the Sessions Court, Alor Star, in favour of the respondent (plaintiff) for vacant possession of a piece of land and for damages against him and the first appellant who was co-defendant in the said action. On 21st February, 1972, he despatched several copies of notice of appeal against the said decision to the Sessions Court, Alor Star. However, he did not serve a copy of such notice on the respondent or his solicitors. The reason for his failure was ignorance of procedural law. It appears that he was not represented by counsel in the court below and only engaged one for the purposes of the appeal. When his solicitors served the memorandum of retainer, memorandum and record of appeal, they were informed by the respondent's solicitors that notice of appeal had not been served on the respondent nor on them and that they would apply to the court for dismissal of the appeal before the hearing.

The procedure for filing notice of appeal against the decision of the sessions court, whether the whole or any part thereof, is governed by Order 39 rule 2 of the Subordinate Courts Rules, 1950. Rule 2(3) requires such notice to be filed within fourteen days from the day on which such decision was pronounced. Whereupon the court appealed from shall supply to the appellant a certified copy of the judgment or grounds of decision, as the case may be, on payment of the required fees. Sub-rule (6) requires such notice of appeal to be served by the appellant on all parties directly affected by the appeal or their respective solicitors.

Although no time limit within which the appellant has to serve a copy of such notice is expressly provided in sub-rule (6), by virtue of rule 3(1) of the same Order, it can safely be implied that the appellant has to do so within the same period as provided for filing such notice in the court appealed against, *i.e.* within fourteen days within which such decision was pronounced. That such is the intention of the legislature is clear because it is only after the appellant has complied with the requirements of rule 2 which includes sub-rule (6) that the court appealed against is bound to prepare all the necessary records as required under rule 3(1) after which notice that such records are ready will be served on the appellant by the said court.

A number of authorities were cited which in general requires the applicant to give special reasons to move the court to extend time in his favour.

In *John Puddicombe Wilkins & Two Others.* v. *John Patrick Kenelm Wilkins & Another,*(1) Thomson J. (as he then was) took the view that there must be special circumstances which would justify the court in granting the application sought. That was an application for leave to appeal out of time. In the course of his judgment, His Lordship discussed and applied the principle in the case of *D. C. Butler-Madden* v. *Krishnasamy,*(2) which in turn followed the principle laid down in the English Court of Appeal in *Re Coles and Ravenshear.*(3) It was held in that case that a mistake in law on the part of the appellant's legal advisers was not sufficient ground for granting special leave to appeal under R.S.C. Order 58 rule 15 as it stood prior to 1909. The principle was recently followed by the Federal Court in *Chong Kueng Ying & Ors.* v. *Lovis Lavagna.*(4) Suffian F.J. said:— "The law here, however, is the same as the pre-1909 English law: the mistake of a legal adviser is not a sufficient